



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Department of Health (State Board of)
VAC Chapter Number:	12 VAC 5-371
Regulation Title:	Rules and Regulations for the Licensure of Nursing Facilities
Action Title:	Periodic Review and Retention of Regulations
Date:	November 30, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The essential purpose of the regulation is to protect and promote the public health, safety and welfare through the establishment and enforcement of regulations setting minimum standards in the operation of a nursing facility. The regulation includes standards for (i) the construction and maintenance of nursing facilities to assure environmental protection and safety of its patients, employees and the public; (ii) the operation, staffing and equipping of nursing facilities; and (iii) qualifications and training of staff of nursing facilities. There are 266 licensed nursing facilities in Virginia.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The regulation is promulgated under the authority of Section 32.1-12 and Article 1 of Chapter 5 of Title 32.1 of the *Code of Virginia*. Section 32.1-12 of the *Code* grants the Board of Health the legal authority to make, adopt, promulgate and enforce regulations necessary to carry out the provisions of Title 32.1 of the *Code*. Section 32.1-127 of the *Code* allows the Board to promulgate regulations for nursing facilities that are in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals. Sections 32.1-126 and 32.1-131 of the *Code* permit the Commissioner to grant or renew licenses to nursing facilities found in compliance with the provisions of the *Code* and the regulations of the Board.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

One public comment was received. An assistant vice-president of geriatric and long-term care for a Virginia health care system submitted the following comment, set forth verbatim rather than summarized:

As you review the current nursing home regulations, several regulations related to design features of nursing homes have become burdensome as providers and architects attempted to make nursing homes more residential for the long-term residents who reside in the facilities. For example, 12 VAC 5-371-460 Nursing Unit (B) requires that all resident corridors and resident open areas shall be visible or monitored by a device from the central nursing station. As we attempt to design facilities with decentralized nursing stations, placing the nursing staff closer to the resident rooms and activity spaces without a centralized station, and as we utilize nurse call systems that utilize pagers or phones (at times wireless systems), this particular regulation becomes very burdensome. We also have attempted to design smaller activity spaces and smaller dining spaces on each unit to provide more social interaction and "community" among the residents; thus increasing their quality of life. Here again, the regulations become burdensome and waivers are not granted. As we struggle to improve the quality of life for residents in today's nursing homes, the regulations restrict unnecessarily the improvements that could be gained.

While certainly motivated by a valid concern, this comment does not warrant an amendment, as the regulations already provide for accommodating such situations. Section 12 VAC 5-371 400, Unique Design Solutions, was developed specifically to allow facilities the opportunity to utilize new technologies and environmental enhancements in the design of facilities, while still ensuring quality of care for facility residents. In addition, the regulation also allows the granting of variances provided resident care and quality of service will not be compromised. Such variances are expeditiously granted when warranted.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation, comprehensively revised in 1997, continues to assure safe, adequate and efficient nursing facility operation and to promote the health, safety and adequate care of residents in nursing facilities without unreasonably interfering with the operation of the facility. The regulation assures the public that uniform quality assurance standards are being maintained by all nursing facilities; no amendments of the regulation are warranted. The regulation is generally clearly written and understandable.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

This regulation is clearly and directly mandated by law and the realities attending long term care. There is no less burdensome or intrusive alternative that will ensure the safety and well being of the residents in Virginia's nursing facilities.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

VDH recommends that the regulation, recently revised comprehensively, be retained as drafted insofar as it has proven to be effective in operating to protect public health. The Department will continue to monitor its effectiveness and will seek amendment of the regulation in the event such action is deemed warranted.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

The regulation does not directly affect the family in Virginia. Indirectly, the regulation has a positive impact on family units utilizing nursing facilities as it assures the necessary consistency in care provided to family members utilizing a nursing facility. Therefore, the regulation does not directly affect the authority and rights of parents in the education, nurturing, and supervision of their children, economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents, the marital commitment or disposable family income.